

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Time Warner Cable Inc.)	CSR 7782-E, 7786-E, 7787-E, 7789-E,
)	7790-E
Petition for Determination of Effective)	
Competition in various Ohio Communities)	

MEMORANDUM OPINION AND ORDER

Adopted: July 2, 2008

Released: July 3, 2008

By the Senior Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION AND BACKGROUND

1. Time Warner Cable Inc, hereinafter referred to as “Petitioner,” has filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(2), 76.905(b)(1) and 76.907 of the Commission’s rules for a determination that Petitioner is subject to effective competition in those communities listed on Attachment A and hereinafter referred to as “Communities.” Petitioner alleges that its cable system serving the communities listed on Attachment B and hereinafter referred to as Group B Communities is subject to effective competition pursuant to Section 623(1) of the Communications Act of 1934, as amended (“Communications Act”)¹ and the Commission’s implementing rules,² and is therefore exempt from cable rate regulation in the Communities because of the competing service provided by two direct broadcast satellite (“DBS”) providers, DirecTV, Inc. (“DirecTV”) and Dish Network (“Dish”). Petitioner additionally claims to be exempt from cable rate regulation in the Communities listed on Attachment C and hereinafter referred to as Group C Communities because the Petitioner serves fewer than 30 percent of the households in the franchise area. The petitions are unopposed.

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,³ as that term is defined by Section 623(l) of the Communications Act and Section 76.905 of the Commission’s rules.⁴ The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁵ For the reasons set forth below, we grant the petitions based on our finding that Petitioner is subject to effective competition in the Communities listed on Attachment A.

¹See 47 U.S.C. § 543(a)(1).

²47 C.F.R. § 76.905(b)(2) and 47 C.F.R. § 76.905(b)(1).

³47 C.F.R. § 76.906.

⁴See 47 U.S.C. § 543(l) and 47 C.F.R. § 76.905.

⁵See 47 C.F.R. §§ 76.906 & 907.

II. DISCUSSION

A. The Competing Provider Test

3. Section 623(l)(1)(B) of the Communications Act provides that a cable operator is subject to effective competition if the franchise area is (a) served by at least two unaffiliated multi-channel video programming distributors (“MVPD”) each of which offers comparable video programming to at least 50 percent of the households in the franchise area; and (b) the number of households subscribing to programming services offered by MVPDs other than the largest MVPD exceeds 15 percent of the households in the franchise area;⁶ this test is otherwise referred to as the “competing provider” test.

4. The first prong of this test has three elements: the franchise area must be “served by” at least two unaffiliated MVPDs who offer “comparable programming” to at least “50 percent” of the households in the franchise area.⁷

5. Turning to the first prong of this test, it is undisputed that these Group B Communities are “served by” both DBS providers, DIRECTV and Dish, and that these two MVPD providers are unaffiliated with Petitioner or with each other. A franchise area is considered “served by” an MVPD if that MVPD’s service is both technically and actually available in the franchise area. DBS service is presumed to be technically available due to its nationwide satellite footprint, and presumed to be actually available if households in the franchise area are made reasonably aware of the service’s availability.⁸ The Commission has held that a party may use evidence of penetration rates in the franchise area (the second prong of the competing provider test discussed below) coupled with the ubiquity of DBS services to show that consumers are reasonably aware of the availability of DBS service.⁹ We further find that Petitioner has provided sufficient evidence of DBS advertising in local, regional, and national media that serve the Group B Communities to support their assertion that potential customers in the Group B Communities are reasonably aware that they may purchase the service of these MVPD providers.¹⁰ The “comparable programming” element is met if a competing MVPD provider offers at least 12 channels of video programming, including at least one channel of nonbroadcast service programming¹¹ and is supported in this petition with copies of channel lineups for both DIRECTV and Dish.¹² Also undisputed is Petitioner’s assertion that both DIRECTV and Dish offer service to at least “50 percent” of the households in the Group B Communities because of their national satellite footprint.¹³ Accordingly, we find that the first prong of the competing provider test is satisfied.

6. The second prong of the competing provider test requires that the number of households subscribing to MVPDs, other than the largest MVPD, exceed 15 percent of the households in a franchise area. Petitioner asserts that it is the largest MVPD in the Group B Communities.¹⁴ Petitioner sought to determine the competing provider penetration in the Group B Communities by purchasing a subscriber

⁶47 U.S.C. § 543(l)(1)(B); *see also* 47 C.F.R. § 76.905(b)(2).

⁷47 C.F.R. § 76.905(b)(2)(i).

⁸*See* Petition at 4.

⁹Mediacom Illinois LLC et al., *Eleven Petitions for Determination of Effective Competition in Twenty-Two Local Franchise Areas in Illinois and Michigan*, 21 FCC Rcd 1175 (2006).

¹⁰47 C.F.R. § 76.905(e)(2).

¹¹*See* 47 C.F.R. § 76.905(g). *See also* Petition at 5.

¹²*See* Petition at 6.

¹³*See* Petition at 6-7.

¹⁴*Id.* at 7-8.

tracking report from the Satellite Broadcasting and Communications Association (“SBCA”) that identified the number of subscribers attributable to the DBS providers within the Group B Communities on a zip code and zip code plus four basis where necessary.¹⁵

7. Based upon the aggregate DBS subscriber penetration levels that were calculated using Census 2000 household data,¹⁶ as reflected in Attachment B, we find that Petitioner has demonstrated that the number of households subscribing to programming services offered by MVPDs, other than the largest MVPD, exceeds 15 percent of the households in the Group B Communities. Therefore, the second prong of the competing provider test is satisfied for each of the Group B Communities.

8. Based on the foregoing, we conclude that Petitioner has submitted sufficient evidence demonstrating that both prongs of the competing provider test are satisfied and Petitioner is subject to effective competition in the Group B Communities.

B. The Low Penetration Test

9. Section 623(l)(1)(A) of the Communications Act provides that a cable operator is subject to effective competition if the Petitioner serves fewer than 30 percent of the households in the franchise area; this test is otherwise referred to as the “low penetration” test.¹⁷ Petitioner alleges that it is subject to effective competition under the low penetration effective competition test because it serves less than 30 percent of the households in the franchise area.

10. Based upon the subscriber penetration level calculated by Petitioner, as reflected in Attachment C, we find that Petitioner has demonstrated the percentage of households subscribing to its cable service is less than 30 percent of the households in the Group C Communities. Therefore, the low penetration test is also satisfied as to the Group C Communities.

¹⁵*Id.*

¹⁶*Id.*

¹⁷47 U.S.C. § 543(l)(1)(A).

III. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that the petitions for a determination of effective competition filed in the captioned proceeding by Time Warner Cable Inc. **ARE GRANTED**.

12. **IT IS FURTHER ORDERED** that the certification to regulate basic cable service rates granted to any of the Communities set forth on Attachment A **IS REVOKED**.

13. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁸

FEDERAL COMMUNICATIONS COMMISSION

Steven A. Broecker
Senior Deputy Chief, Policy Division, Media Bureau

¹⁸47 C.F.R. § 0.283.

ATTACHMENT A

CSR(s) 7782-E, 7786-E, 7787-E, 7789-E, 7790-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)
<u>CSR 7782-E</u>	
Beaver Township	OH1217
Beaver Village	OH1725
Clinton	OH0233
Coal	OH0232
Coalton	OH0066
Hamden	OH0235
Jackson	OH2250
Jackson	OH2191
Jackson	OH0067
Liberty	OH2724
Lick	OH0231
Madison	OH2785
Marion	OH1911
McArthur	OH1467
Oak Hill	OH1468
Rio Grande	OH1529
Union	OH1910
Wellston	OH0068
Zaleski	OH2597
<u>CSR 7786-E</u>	
Caledonia	OH1591
Grand Prairie	OH2576
Marion City	OH0074
Marion Township	OH0590
Morril	OH1938
Prospect	OH2577
<u>CSR 7787-E</u>	
Albany	OH0752
Athens	OH0679
Waterloo	OH1945
York	OH2625
<u>CSR 7789-E</u>	
Falls	OH1525
Good Hope	OH2001
Green	OH2611
Logan	OH0027
<u>CSR 7790-E</u>	
Defiance Township	OH1759
Defiance City	OH0055
Highland	OH2630
Ney	OH2090
Noble	OH2678
Richland	OH2636
Washington	OH2642

ATTACHMENT B

CSR(s) 7782-E, 7786-E, 7787-E, 7789-E, 7790-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)	CPR*	2000 Census Household	Estimated DBS Subscribers
<u>CSR 7782-E</u>				
Beaver Township	OH1217	34.95%	515	180
Beaver Village	OH1725	46.15%	195	90
Coalton	OH0066	25.24%	210	53
Hamden	OH0235	32.55%	344	112
Jackson	OH2250 OH2191 OH0067	31.65%	2,667	844
Liberty	OH2724	34.43%	607	209
Lick	OH0231	31.69%	1,038	329
McArthur	OH1467	31.14%	777	242
Oak Hill	OH1468	44.43%	673	299
Wellston	OH0068	25.13%	2,359	593
Zaleski	OH2597	42.56%	148	63
<u>CSR 7786-E</u>				
Caledonia	OH1591	54.78%	230	126
Grand Prairie	OH2576	26.25%	598	157
Marion City	OH0074	25.72%	13,551	3,485
Morrall	OH1938	54.42%	147	80
<u>CSR 7787-E</u>				
Albany	OH0752	53.41%	352	188
Athens	OH0679	16.03%	6,271	1,005
<u>CSR 7789-E</u>				
Green	OH2611	42.74%	964	412
Logan	OH0027	42.70%	2,790	1191
<u>CSR 7790-E</u>				
Defiance City	OH0055	28.42%	6,572	1,868

Ney	OH2090	49.26%	136	67
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*CPR = Percent of competitive DBS penetration rate.

ATTACHMENT C

CSR(s) 7782-E, 7786-E, 7787-E, 7789-E, 7790-E

COMMUNITIES SERVED BY TIME WARNER CABLE INC.

Communities	CUID(S)	Franchise Area Households	Cable Subscribers	Penetration Percentage
<u>CSR 7782-E</u> Clinton	OH0233	756	82	10.85%
Coal	OH0232	780	62	7.95%
Madison	OH2785	264	42	15.91%
Marion	OH1911	517	53	10.25%
Rio Grande	OH1529	232	45	19.40%
Union	OH1910	450	128	28.44%
<u>CSR 7786-E</u> Marion Township	OH0590	16,605	2,464	14.84%
Prospect	OH2577	835	151	18.08%
<u>CSR 7787-E</u> Waterloo	OH1945	1,023	186	18.18%
York	OH2625	3,045	65	2.13%
<u>CSR 7789-E</u> Falls	OH1525	4,627	858	18.54%
Good Hope	OH2001	535	135	25.23%
<u>CSR 7790-E</u> Defiance Township	OH1759	5,374	156	2.90%
Highland	OH2630	961	258	26.85%
Noble	OH2678	2,332	382	16.38%
Richland	OH2636	1,204	133	11.05%
Washington	OH2642	573	30	5.24%